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SUBJECT: US LEGAL POSITION ON ISRAELI SUSPENSION ISSUE

1. IN LIGHT OF INCREASING SPECULATION IN INTERNATIONAL
MEDIA CONCERNING RADICAL MOVES IN REGIONAL MEETINGS TO
SUSPEND ISRAEL FROM UNGA, ADDRESSEE POSTS MAY FIND FOLLOWING
USNLEGAL ANALYSIS MAY BE HELPFUL TO PRESENT TO HOST GOVERN-
MENTS AS RANGE OF UN ISSUES IN SECRETARY'S JULY 14 MILWAUKEE
SPEECH IS DISCUSSED. (FRENCH AND SPANISH TRANSLATIONS
BEING SENT SEPTEL AS APPROPRIATE).

QUOTE IN VIEW OF PUBLIC QUESTIONS THAT HAVE BEEN RAISED
ABOUT THE CIRCUMSTANCES IN WHICH THE GENERAL ASSEMBLY
OF THE UNITED NATIONS MAY LEGALLY SUSPEND A MEMBER FROM THE
RIGHTS AND PRIVILEGES OF MEMBERSHIP, OR IN WHICH IT MAY
EXPEL A MEMBER FROM THE ORGANIZATION, THE GOVERNMENT OF THE
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UNITED STATES WISHES TO SET FORTH ITS POSITION ON THE LEGAL

REQUIREMENTS FOR SUSPENSION OF THE RIGHTS AND PRIVILEGES OF A MEMBER OR THE EXPULSION OF A MEMBER FROM THE UNITED NATIONS.

IN THE VIEW OF THE UNITED STATES, A MEMBER OF THE UNITED NATIONS MAY LEGALLY BE DEPRIVED OF THE EXERCISE OF THE RIGHTS AND PRIVILEGES OF MEMBERSHIP, OR EXPELLED, ONLY IN ACCORDANCE WITH ARTICLES 5, 6 AND 19 OF THE UNITED NATIONS CHARTER.

ARTICLE 5 ALLOWS THE GENERAL ASSEMBLY TO SUSPEND FROM THE EXERCISE OF THE RIGHTS AND PRIVILEGES OF MEMBERSHIP ONLY MEMBERS "AGAINST WHICH PREVENTIVE OR ENFORCEMENT ACTION HAS BEEN TAKEN BY THE SECURITY COUNCIL" AND ONLY "UPON THE RECOMMENDATION OF THE SECURITY COUNCIL." IN ACCORDANCE WITH ARTICLE 18, PARAGRAPH 2 OF THE CHARTER, A TWO-THIRDS VOTE OF THE ASSEMBLY IS THEN REQUIRED BECAUSE THE SUSPENSION OF THE RIGHTS AND PRIVILEGES OF MEMBERSHIP IS SPECIFIED TO BE AN "IMPORTANT QUESTION".

ARTICLE 6 PERMITS EXPULSION FROM THE ORGANIZATION OF A MEMBER ONLY IF THAT MEMBER HAS PERSISTENTLY VIOLATED THE PRINCIPLES OF THE CHARTER AND ONLY UPON THE RECOMMENDATION OF THE SECURITY COUNCIL. ARTICLE 19 PROVIDES THAT A MEMBER OF THE UNITED NATIONS SHALL HAVE NO VOTE IN THE GENERAL ASSEMBLY, UNLESS SPECIFICALLY PERMITTED BY THE ASSEMBLY, IF THAT MEMBER IS IN ARREARS IN THE PAYMENT OF ITS FINANCIAL CONTRIBUTIONS TO THE ORGANIZATION IN AN AMOUNT EQUAL TO OR EXCEEDING THE AMOUNT DUE FROM IT FOR THE PRECEDING TWO FULL YEARS. IT IS PLAIN THAT ARTICLE 19 MAY BE INVOKED ONLY WHEN A MEMBER IS IN THE REQUISITE ARREARS. NO OTHER CONDITION FOR SUSPENSION OF A MEMBER'S VOTE IN THE GENERAL ASSEMBLY IS PROVIDED FOR BY THE CHARTER.

THE FACT THAT SUSPENSION OR EXPULSION UNDER ARTICLES 5 AND 6 OF THE CHARTER REQUIRES THE PRIOR RECOMMENDATION OF THE SECURITY COUNCIL IN FAVOR OF SUCH ACTION IS NOT OPEN TO DISPUTE. THIS WAS CONFIRMED BY THE INTERNATIONAL COURT OF JUSTICE IN ITS ADVISORY OPINION ON THE COMPETENCE OF THE GENERAL ASSEMBLY FOR THE ADMISSION OF A STATE TO THE UNITED NATIONS, I.C.J. REPORTS, 1950. WHILE THAT OPINION DEALS LARGELY WITH ADMISSION, RATHER THAN SUSPENSION OR EXPULSION, OF A MEMBER, IT INTERPRETS THE IDENTICAL PROVISION OF ARTICLE 4 FOR ADMISSION--A DECISION OF THE GENERAL ASSEMBLY "UPON THE RECOMMENDATION OF THE SECURITY COUNCIL"--IN TERMS WHICH EXPRESSLY PLACE THE COOPERATIVE ACTION OF THE SECURITY COUNCIL AND THE GENERAL ASSEMBLY UNDER ARTICLES 4, 5 AND 6 OF THE CHARTER ON THE SAME PLANE.

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THE COURT HELD THE PRIOR AFFIRMATIVE RECOMMENDATION OF THE SECURITY COUNCIL TO BE "INDISPENSABLE"; THAT THE RECOMMENDATION OF THE SECURITY COUNCIL IS THE CONDITION PRECEDENT TO THE DECISION OF THE ASSEMBLY.

THE FOREGOING CONSIDERATIONS ARE NOT AFFECTED BY THE AUTHORITY OF THE GENERAL ASSEMBLY TO PASS UPON THE CREDENTIALS OF REPRESENTATIVES OF A MEMBER. THE CREDENTIALS PROCEDURES CONTAINED IN CHAPTER IV OF THE GENERAL ASSEMBLY'S RULES OF PROCEDURE CANNOT LEGITIMATELY BE EMPLOYED TO CIRCUMVENT THE EXCLUSIVE PROVISIONS OF THE CHARTER GOVERNING SUSPENSION, IN ORDER TO DEPRIVE A MEMBER OF THE EXERCISE OF ITS RIGHTS AND PRIVILEGES OF MEMBERSHIP, INCLUDING THE RIGHT TO PARTICIPATE FULLY IN MEETINGS OF THE GENERAL ASSEMBLY. THIS CONCLUSION IS ELABORATED BY THE OPINION OF THE LEGAL COUNSEL OF THE UNITED NATIONS OF 11 NOVEMBER 1970 ON THE SCOPE OF CREDENTIALS IN RULE 27 OF THE ASSEMBLY'S RULES OF PROCEDURE. THE LEGAL COUNSEL CONCLUDED:

"THE PARTICIPATION IN MEETINGS OF THE GENERAL ASSEMBLY IS QUITE CLEARLY ONE OF THE IMPORTANT RIGHTS AND PRIVILEGES OF MEMBERSHIP. SUSPENSION OF THIS RIGHT THROUGH THE REJECTION OF CREDENTIALS WOULD NOT SATISFY THE FOREGOING REQUIREMENTS (OF ARTICLE 5) AND WOULD THEREFORE BE CONTRARY TO THE CHARTER."

THE PROPER ROLE OF THE CREDENTIALS COMMITTEE OF THE GENERAL ASSEMBLY IS TO JUDGE WHETHER THE CREDENTIALS SUBMITTED BY A DELEGATION ARE IN ORDER: NAMELY, WHETHER THE INDIVIDUALS SUBMITTING THE CREDENTIALS ARE THOSE NAMED THEREIN WHETHER THE CREDENTIALS WERE SIGNED BY THE HEAD OF STATE OR FOREIGN MINISTER OF THE COUNTRY

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IN QUESTION, AND WHETHER THE SIGNATURES ARE AUTHENTIC. THE POLICIES OF THE GOVERNMENT SUBMITTING CREDENTIALS FOR ITS DELEGATION ARE NOT A LEGITIMATE OR APPROPRIATE CONSIDERATION IN THE PROCESS OF PASSING UPON CREDENTIALS.

THE GOVERNMENT OF THE UNITED STATES THUS REGARDS PRECLUSION OF THE REPRESENTATIVES OF A MEMBER FROM PARTICIPATION IN THE GENERAL ASSEMBLY BY MEANS OF REJECTION OF CREDENTIALS, WHEN THOSE CREDENTIALS FULFILL THE FOREGOING REQUIREMENTS, AS CONSTITUTING DEPRIVATION OF A MEMBER OF A PARAMOUNT PRIVILEGE AND RIGHT OF MEMBERSHIP IN THE UNITED NATIONS IN VIOLATION OF THE CHARTER AND OF THE GENERAL ASSEMBLY'S RULES OF PROCEDURE. IT ACCORDINGLY TRUSTS THAT THE SECRETARY-GENERAL AND HIS STAFF WILL IN THIS MATTER EXERCISE ALL APPROPRIATE EFFORTS TO ENCOURAGE

ADHERENCE BY THE MEMBERSHIP TO THE CHARTER AND RULES OF
PROCEDURE. END QUOTE. KISSINGER

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